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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re TINA G., a Person Coming Under the  
Juvenile Court Law.

SONOMA COUNTY HUMAN  
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

GEORGE G.,

Defendant and Appellant.

A093614

(Sonoma County  
Super. Ct. No. DEP-1117, DEP-1118,  
DEP-1119, DEP-1120)

George G. (appellant) appeals from orders entered at the contested jurisdictional/dispositional hearing sustaining the dependency petitions and ordering out-of-home placement for his four children. Appellant contends: (1) The family reunification plan was not reasonable because it unlawfully delegated judicial authority regarding visitation to the Sonoma County Human Services Department (Department); (2) the trial court's failure to conduct a *Marsden* hearing (*People v. Marsden* (1970) 2 Cal.3d 118) deprived appellant of his right to a fair hearing; and (3) the trial court abused its discretion by denying appellant's request for a continuance. We affirm the orders.

**FACTUAL AND PROCEDURAL BACKGROUND**

On August 10, 2000, minors Tina G. (age 13), Crystal G. (age 10), Brandon G. (age 11) and Rachael G. (age 7) were removed from appellant's custody. Sonoma County Deputy Sheriff Troy Newton responded to a call regarding a family dispute

around 8:30 p.m. on August 10, 2000. When he arrived, he found appellant outside arguing with his 81-year old father. Appellant was very agitated and aggressive, and his father reported that he had been using methamphetamine. Appellant told Deputy Newton he had been stabbed, was bleeding, and the knife was on the ground. Newton saw no knife or evidence of stabbing or bleeding and concluded that appellant was in a state of methamphetamine psychosis. Other indicia of this condition were that appellant was unable to stay still, was sweating profusely, had a bad body odor, and his pupils were dilated.

Deputy Sheriff Vince Mestrovich, who responded to Deputy Newton's call for backup, testified that appellant was displaying bizarre, unpredictable behavior and evidenced signs of extended methamphetamine use. Deputy Mestrovich described the condition of the house where the children were living as deplorable, which he believed presented a risk to their health and safety due to the amount of trash, rotten food, and mice inside. The children themselves were also filthy, wearing soiled clothing, and appeared not to have bathed in days.

The officers arrested appellant and took the children into protective custody.

Appellant testified at the jurisdictional and dispositional hearing that the house was kept clean, and he was not a drug abuser. He said his father did not allow dirty dishes to remain overnight, and there was plenty of fresh food in the refrigerator. Appellant explained that he did not give a urine sample when requested during his arrest because he was unable to urinate then. Appellant said he was agitated that night because he had just had a fight with his father.

Appellant acknowledged that he and the children's mother had prior contacts with the Department and that in 1994 they had signed an agreement to participate in drug treatment and other programs. He stopped participating in the programs because he assumed they had been completed.

Robin Smith, the social worker who had prepared the report for the jurisdictional and dispositional hearing, testified that this was the third time the children had been removed from the home. The children had head lice and were in need of medical and

dental treatment. Ms. Smith explained that appellant has been referred for substance abuse treatment programs several times but has not participated in them. She discounted the negative drug testing results appellant had submitted on the ground that they failed to show any commitment to continued abstinence or even recognition that there is any problem. Ms. Smith recommended that the children remain out of appellant's custody until he addresses his drug problem because of the toll it has taken on the children from longstanding neglect and instability.

After the attorneys presented final arguments and before the court made its findings, appellant addressed the court and complained about his attorney. Appellant said there were witnesses he had wanted to call, such as his children and some of their teachers, but that they had not been subpoenaed. Appellant's attorney spoke in response and explained that she felt the witnesses appellant wanted would not have been helpful to his case.

The court then found by a preponderance of the evidence that all of the allegations involving appellant were true. With regard to disposition, the trial court found by clear and convincing evidence that there was a substantial risk of harm to the children if they were returned to appellant. The court adopted the recommendations of the Department's report. One of those recommendations was that appellant "maintain regular visitation as directed by the social worker."

After making its ruling, the court specifically addressed visitation issues. Much of the discussion related to the children's mother, who was incarcerated. Appellant's counsel raised the issue of visitation at Christmas. Counsel for the Department explained that appellant's visitation had been supervised and that the department would make every effort to arrange for visitation as close to the Christmas holiday as possible.

## **DISCUSSION**

### **Visitation.**

Appellant contends that the visitation order that he "maintain regular visitation as directed by the social worker" was an unlawful delegation of judicial authority to the Department. He relies on *In re Julie M.* (1999) 69 Cal.App.4th 41 and *In re Jennifer G.*

(1990) 221 Cal.App.3d 752. In *Julie M.* the juvenile court visitation order gave the older children the option to refuse visitation with their mother. The appellate court reversed the order on the ground that it was an improper delegation of judicial power to the children. The order in *Jennifer G.* stated that visitation with the mother and father was to “be under the direction of the Department of Social Services.” It was reversed on appeal because it improperly left the entire matter of visitation to the Department, not only how visitation would occur but discretion as to the parent’s right to visitation as well.

The order in this case, by contrast, directs regular visitation but leaves the matter of how to the Department. That is appropriate. “The juvenile court has the sole power to determine whether visitation will occur and may not delegate its power to grant or deny visitation to the DSS. The court may, however, delegate discretion to determine the time, place and manner of the visits. Only when the court delegates the discretion to determine whether any visitation will occur does the court improperly delegate its authority and violate the separation of powers doctrine.” (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008-1009.) The court here delegated only the time, place, and manner of visitation.

***Marsden.***

Appellant contends that the court should have conducted a *Marsden* hearing when appellant addressed the court after closing arguments and complained about his counsel’s failure to subpoena certain witnesses, such as his children, some of their teachers, and his drug counselor. Counsel explained in response that she felt these witnesses would not have been helpful to appellant’s case. Appellant did not, however, request a change of counsel. His complaints were about trial tactics rather than counsel’s competence. “[A] trial court’s duty to permit a defendant to state his reasons for dissatisfaction with his attorney arises when the defendant in some manner moves to discharge his current counsel. The mere fact that there appears to be a difference of opinion between a defendant and his attorney over trial tactics does not place a court under a duty to hold a *Marsden* hearing.” (*People v. Lucky* (1988) 45 Cal.3d 259, 281.)

Appellant has failed to show that a *Marsden* hearing was required. This is true even though the mother's counsel objected to appellant's statement on the ground that he was apparently raising *Marsden* issues. In any event, the court did hear appellant's statement of complaint and counsel's response thereto. There is no indication that appellant's counsel was rendering ineffective assistance.

### **Denial of Continuance.**

At the beginning of the jurisdictional and dispositional hearing, appellant's counsel conveyed appellant's request for a continuance in order to subpoena two of his children to testify and to have the children evaluated by Dr. Charles Silverstein, a psychologist. In conjunction with conveying the request, appellant's counsel stated that she did not feel the children's testimony would be helpful "in this case to contesting jurisdiction and disposition today." Counsel for the Department opposed a continuance, noting that the case had been delayed several times already. The children's counsel also opposed the request, noting that it has been a very stressful period for them; the hearing had already been postponed as a result of a *Marsden* hearing and change of counsel. The court denied the request for a continuance, stating "[g]ood cause has not been shown nor—nor that any continuance would be in the best interest of the minors."

Appellant contends the trial court abused its discretion by denying his request for a continuance. Section 352 of the Welfare and Institutions Code states that "no continuance shall be granted that is contrary to the interest of the minor," and that continuances shall be granted only on a showing of good cause. "In considering the minor's interests, the court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements." (Welf. & Inst. Code, § 352, subd. (a).)

Even though the court misspoke in describing the standard, it expressly found that good cause had not been shown and implicitly determined that a continuance would be contrary to the children's interest. The court's refusal to grant a further delay was reasonable under the circumstances. When this hearing finally took place on December

12, 2001, at least four trial date continuances had been granted, including one due to a peremptory challenge and another due to appellant's prior *Marsden* motion. No abuse of discretion is shown.

**DISPOSITION**

The orders are affirmed. Respondent's motion to augment the record on appeal is denied.

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Kline, P.J.

We concur:

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Haerle, J.

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Ruvolo, J.